

Testimony of

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STATEMENT OF STEWART BAKER  
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BEFORE THE UNITED STATES SENATE COMMITTEE ON THE  
JUDICIARY

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY,  
AND HOMELAND SECURITY

"The Visa Waiver Program: Mitigating risks to ensure safety of all  
Americans"

24 September 2008

Hart Senate Office Building - 216

Chairman Feinstein, Senator Kyl, and Members of the Subcommittee on  
Terrorism, Technology, and Homeland Security, thank you for the  
opportunity to appear before you today to discuss the Visa Waiver Program  
(VWP)

A modernized VWP that strengthens our country's national security, law  
enforcement, and immigration interests is a top priority for the  
Administration. Section 711 of the Implementing Recommendations of the  
9/11 Commission Act of 2007 (the 9/11 Act) (P.L. 110-53) supports this  
objective by concurrently enhancing the VWP's security requirements and  
expanding opportunities for new countries to become VWP members.  
Enhancing the VWP's security requirements and expanding membership  
opportunities are mutually reinforcing goals. As a result, both current and  
prospective VWP members will continue to contribute to a secure  
environment for international travel as well as deepen their cooperation with  
the United States on security-related issues.

The Government Accountability Office's (GAO) recently released report,  
entitled "Visa Waiver Program: Actions Needed to Improve Management of  
Expansion Process and Assess and Mitigate Program Risks," recognizes  
this fact. Moreover, in its report, the GAO acknowledges that the  
Department of Homeland Security (DHS or the Department) has achieved  
several significant security enhancements during the expansion process  
well in advance of adding new members to the VWP. One example of these

enhancements is the requirement that both VWP member and prospective countries enter into agreements with the United States to exchange information on their citizens and nationals traveling to the United States so that we may assess whether they pose a security threat. To date, agreements to exchange watch lists of known and suspected terrorists, to improve the reporting of lost and stolen passports, and to enhance overall counterterrorism and law enforcement cooperation have been concluded with several current and aspirant VWP countries. These agreements, along with the other aspects of the modernized VWP, will provide U.S. government personnel with new tools to secure the borders, help prevent terrorist and criminal activities in the United States and in VWP partner nations, and promote a safer international travel environment for our citizens and those of our VWP allies. The improved reporting of lost and stolen passports is especially noteworthy in this regard. As a direct result of the VWP expansion process, for example, aspirant countries have begun reporting both blank and personalized lost and stolen passports every 24 hours. The Department is therefore able to screen more effectively arriving passengers to detect, apprehend, and limit the movement of terrorists, criminals, and other mala fide travelers.

Overall, the Department believes that the report is broadly supportive of our efforts to date to enhance the security of the VWP while moving forward with expansion of the program. It concludes, for instance, that DHS has fully implemented the majority of the recommendations from the 2006 GAO report on the VWP thereby improving the Department's ability to assess and mitigate program risks. Many of the GAO's recommendations also are consistent with DHS's current approach. In fact, several of the issues identified by GAO already were being addressed prior to the report's release. For example, DHS and the Department of State have begun general discussions on creating procedures so that future candidate countries are selected and designated in a manner that is as transparent and uniform as possible and so that expectations are appropriately managed during the process. Similarly, DHS currently is assessing the feasibility and effectiveness of designating a single office to assume responsibility for developing overstay rate estimates and has taken several steps to improve the accuracy and reliability of the overstay data.

In short, DHS is confident that the steps it has taken to implement the security provisions mandated by the 9/11 Act and manage the expansion process will ensure that the VWP is appropriately structured to assess and mitigate program risks and to adapt to evolving travel needs and security standards.

The Department also has taken the appropriate steps to ensure that VWP expansion would not negatively impact U.S. security, law enforcement, or immigration interests. Over the past 10 months, DHS-led interagency teams

have traveled to the Czech Republic, Estonia, Greece, Hungary, Slovakia, Latvia, Lithuania, and South Korea to comprehensively review their counterterrorism capabilities; immigration, citizenship and naturalization laws; passport production and issuance controls; efforts to combat crime; law enforcement cooperation with the United States; and border control mechanisms. A country cannot be admitted into the VWP until it receives a favorable determination from DHS, in consultation with the Department of State (DOS). DHS has also commissioned the required Director of National Intelligence (DNI) assessment of these countries to inform its determinations.

As noted earlier in this testimony, the goals of security and expansion are complementary. The 9/11 Act gives the Secretary greater flexibility with regard to aspirant countries' nonimmigrant visa refusal rate, provided the Department certifies: (1) that an air exit system is in place that can verify the departure of not less than 97 percent of the foreign nationals who exit through U.S. airports; and (2) that an electronic travel authorization system is fully operational.

The Department expects to verify a 97 percent biographical match for the departure of foreign nationals exiting through U.S. airports consistent with the statutory requirement later this year. I should note that there are several different methods that may be used for verifying the departures of foreign nationals through U.S. airports. As we've testified previously—and communicated to the GAO—no final decision has been made as to precisely which methodology DHS will use in calculating the 97 percent departure rate. The Department continues to evaluate and look for ways to improve the methodology underpinning the air exit calculations. The Department expects that it will be able to certify this system in November 2008.

In addition to working through questions of methodology, DHS continues to engage air carriers to ensure that they are providing timely and complete passenger manifest information. Improved airline data collection has increased compliance rates, which in turn has led to a positive impact on matching records. In May 2008, U.S. Customs and Border Protection (CBP) initiated an operation to assess travel document compliance and manifest submission completeness. This audit targets outbound flights that contain the largest concentration of VWP passengers. For example, from mid-May to mid-July 2008, CBP targeted 439 outbound flights for which it received 89,827 Advanced Passenger Information System (APIS) records. CBP officers at the departure gates identified an additional 474 passengers onboard those flights (with a total of 90,301 passengers), for a manifest completeness rate of 99.5%.

The implementation of the Electronic System for Travel Authorization

(ESTA) program is also well underway. On August 1, 2008, DHS implemented ESTA on a voluntary basis. The rollout has been smooth and successful so far. To date, ESTA has processed more than 125,000 applications, and our experience so far is consistent with our expectations. DHS continues to work with the Departments of State and Commerce, as well as the travel and tourism industries, on ESTA outreach efforts to make sure travelers are aware of the impending requirement to use ESTA. CBP will use the Advance Passenger Information System (APIS)/APIS Quick Query infrastructure to tell carriers through interactive messaging if an alien has received a travel authorization via ESTA, and carriers may then appropriately approve or deny the alien boarding. Additionally, DHS and CBP will work together with the travel industry to develop a solution that will enable carriers and travel agents to submit ESTA applications on behalf of their customers through a mechanism that is independent of the ESTA Web site.

The Department anticipates that ESTA will become mandatory for VWP travelers in January 2009. Overall, it strengthens substantially the security of the VWP by providing DHS with the capability to conduct enhanced advance vetting of VWP travelers. Under the ESTA, VWP travelers are required to submit electronically biographic and other information as currently required by the I-94W Nonimmigrant Alien Arrival/Departure Form to DHS prior to their departure for the United States. ESTA applications are then queried against appropriate databases, enabling DHS to make a determination whether each individual is eligible to travel to the United States under the VWP and whether there exists a law enforcement or security interest in permitting the alien to travel to the United States. Travelers who are denied a travel authorization via ESTA are referred to the Department of State Web site to obtain information about applying for a visa. ESTA is essential to transforming the VWP from a program that evaluates security threats on a country-by-country basis to one that is capable of making traveler-by-traveler determinations. In addition to enhancing security, ESTA will provide for greater efficiencies in the screening of international travelers by reducing traveler delays at the ports of entry.

DHS shares Congress's expressed concern that terrorists and criminals may attempt to exploit visa-free travel. That is why the Department is committed to ensuring that both current and aspirant VWP members enhance their security standards and deepen their cooperation with the United States on security-related issues. As I have outlined today, the Department is well on its way to achieving these goals. We appreciate your continued support of programs that help secure U.S. borders, strengthen the U.S. economy, improve relations with our closest allies, and promote a safer international travel environment.